

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. THOMAS AND ST. JOHN**

<b>BANCO POPULAR de PUERTO RICO,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CIVIL NO. 2004-162</b>
<b>v.</b>	)	
	)	
<b>PARADISE MOTORS, INC., GEORGE E. DENNIS, BUREAU OF CUSTOMS AND BORDER PROTECTION, INTERNAL REVENUE SERVICE, and BUREAU OF INTERNAL REVENUE,</b>	)	<b>ACTION FOR DEBT AND FORECLOSE OF LIENS</b>
	)	
<b>Defendants.</b>	)	
	)	
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**SUMMARY JUDGMENT**

This matter is before the Court upon the motion of Banco Popular de Puerto Rico (“Banco Popular”) for summary judgment against defendants Paradise Motors, Inc. (“Paradise Motors”), George Dennis (“Dennis”), Bureau of Customs and Border Protection (“Customs”), Internal Revenue Service (“IRS”), and Bureau of Internal Revenue (“BIR”). No party opposes Banco Popular’s motion for summary judgment. Nevertheless, the Court considers whether Banco Popular has shown that there is no material fact in dispute, and whether it is entitled to judgment as a matter of law pursuant to Federal Rule of Civil Procedure 56. Upon review of the pleadings and supporting materials filed by Banco Popular, the Court finds the following undisputed material facts:

1. Paradise Motors is the owner of the property described as Plot No. 34-AE (0.5642 U.S. acre), La Grande Princesse, Company Quarter, St. Croix, Virgin Islands, as shown on P.W.D. Drawing 156, dated September 29, 1948 and revised April 15, 1985, and Parcel No. 34-AH (0.2309 U.S. acre), La Grande Princesse, Company Quarter, St. Croix,

Virgin Islands, as shown on P.W.D. Drawing No. 4402, dated August 10, 1987 and revised March 29, 1988 ( collectively, the “Properties”).

2. Dennis is the lessee under a lease agreement with the Government of the Virgin Islands, acting through its Department of Planning and Natural Resources, covering Parcel No. 7 Crown Bay Fill, St. Thomas, Virgin Islands (the “Leasehold”).

3. Banco Popular and Dennis are parties to a loan agreement dated October 21, 1992, pursuant to which Banco Popular made a loan to Dennis in the principal amount of \$390,000.00 (the “1992 Loan”). Dennis promised to pay Banco Popular the principal sum of \$390,000.00 plus interest as provided in the 1992 Note.

4. Paradise Motors executed an unlimited guaranty dated October 21, 1992 for the repayment of the 1992 Note (the “Paradise Motors Guaranty”).

5. As security for the repayment of the 1992 Note, Dennis executed and delivered to Banco Popular a first priority leasehold mortgage dated October 21, 1992 (the “1992 Leasehold Mortgage”) covering all of Dennis’ right, title and interest in the Leasehold. The 1992 Leasehold Mortgage was recorded with the Recorder of Deeds for the District of St. Thomas and St. John on October 21, 1992 in Book 40-C, at Page 65, as Document No. 5587.

6. As further security for the repayment of the 1992 Note, Dennis and Banco Popular entered into a security agreement dated October 21, 1992 (the “1992 Security Agreement”), pursuant to which Dennis provided Banco Popular with a security interest in all of his inventory, machinery, accounts, chattel paper and other personal property more particularly described in the 1992 Security Agreement (the “Dennis Collateral”). Banco

Popular perfected its security interest in the Dennis Collateral by filing UCC-1 Financing Statements in the Office of the Lieutenant Governor, Division of Corporations and Trademarks, on October 21, 1992 as Document No. C-209. Such security interest has remained perfected by the timely filing of Continuation Statements.

7. Banco Popular, Paradise Motors and Dennis are parties to a loan agreement dated November 10, 1995, pursuant to which Banco Popular made a loan to Paradise Motors in the principal amount of \$565,500.00 (the “1995 Loan”).

8. The obligation of Paradise Motors to repay the 1995 Loan is evidenced by a promissory note (the “1995 Note”), in which Paradise Motors promised to pay Banco Popular the principal sum of \$565,500.00 plus interest as provided in the 1995 Note.

9. Dennis executed an unlimited guaranty dated November 10, 1995 for the repayment of the 1995 Note (the “Dennis Guaranty”).

10. As security for the repayment of the 1995 Note, Paradise Motors executed and delivered to Banco Popular a first priority mortgage dated November 10, 1995 (the “1995 Mortgage”) covering the Properties. The 1995 Mortgage was recorded with the Recorder for the District of St. Croix on November 20, 1995 in P.C. 559, at Page 387 as Document No. 6018.

11. As further security for the repayment of the 1995 Note, Paradise Motors executed and delivered to Banco Popular an Assignment of Leases and Rents dated November 10, 1995 (the “Assignment”), pursuant to which Paradise Motors assigned to Banco Popular all of its right, title and interest in the leases, licenses, concession contracts and other agreements concerning the use or occupancy of the Properties, including all rents,

income, receipts, revenues, issues and profits from such agreements (the “Rents”). The Assignment was recorded with the Recorder for the District of St. Croix on November 20, 1995, in P.C. 559, at Page 398, as Document No. 6019.

12. As further security for the repayment of the 1995 Note and the Dennis Guaranty, Dennis executed and delivered to Banco Popular a leasehold mortgage dated November 10, 1995 (the “1995 Leasehold Mortgage”) covering all of Dennis’ right, title and interest in the Leasehold. The 1995 Leasehold Mortgage was recorded with the Recorder for the District of St. Thomas and St. John on November 13, 1995 in Book 45-I, at Page 353, as Document No. 4952.

13. As further security for the repayment of the 1995 Note, Paradise Motors and Banco Popular entered into a security agreement dated November 10, 1995 (the “1995 Security Agreement”), pursuant to which Paradise Motors provided Banco Popular with a security interest in all of Paradise Motors’ assets including those more particularly described in the 1995 Security Agreement (the “Paradise Motors Collateral”). Banco Popular perfected its security interest in the Paradise Motors Collateral by filing UCC-1 Financing Statements in the Office of the Lieutenant Governor, Division of Corporations and Trademarks, on November 13, 1995, as Document Nos. C-0097 and C-0098. Such security interest has remained perfected by the timely filing of Continuation Statements.

14. On September 6, 2000, Banco Popular made a loan to Dennis in the principal sum of \$29,698.33 (the “2000 Loan”).

15. The obligation of Dennis to repay the 2000 Loan is evidenced by a promissory note (the “2000 Note”), in which Dennis promised to pay Banco Popular the

principal amount of \$29,698.33 plus interest as provided in the 2000 Note. (The 1992 Note, the 1995 Note, and the 2000 Note may be referred to collectively as the “Notes.”)

16. As security for the repayment of the Notes, Dennis executed and delivered to Banco Popular a first priority leasehold mortgage dated September 12, 2000 (the “2000 Leasehold Mortgage”) covering all of Dennis’ right, title, and interest in the Leasehold. The 2000 Leasehold Mortgage was recorded with the Recorder for the District of St. Thomas and St. John on February 4, 2002 as Document No. 2002000456. (The Paradise Motors Guaranty, the 1992 Leasehold Mortgage, the 1992 Security Agreement, the Dennis Guaranty, the 1995 Mortgage, the Assignment, the 1995 Leasehold Mortgage, the 1995 Security Agreement, and the 2000 Leasehold Mortgage may be referred to collectively as the “Security Documents.” The Properties, the Leasehold, the Dennis Collateral, the Paradise Motors Collateral, and the Rents may be referred to collectively as the “Secured Property.”)

17. Banco Popular, Dennis, and Paradise Motors are parties to a forbearance agreement dated October 2001 (the “Forbearance Agreement”), pursuant to which Dennis and Paradise Motors (a) acknowledged that they were in default under the Notes and Security Documents and that as of the date of the Forbearance Agreement \$940,000.00 was currently due and payable to Banco Popular without offset, deduction, counterclaim or defense of any kind, and (b) agreed to repay such debt in monthly installments of \$5,941.44, with the entire remaining balance due and payable within one year after the date of the Forbearance Agreement.

18. Banco Popular notified Paradise Motors and Dennis of the various defaults

under the Notes and the Security Documents and demanded that Paradise Motors and Dennis pay all outstanding amounts due under these instruments.

19. Paradise Motors and Dennis have failed to pay Banco Popular as demanded or otherwise cure their defaults.

20. As of May 6, 2005, the outstanding amounts due under the Notes, exclusive of costs and attorneys fees, is as follows:

	<b><u>1992 Loan</u></b>	<b><u>1995 Loan</u></b>
Principal	\$241,046.00	\$438,101.52
Interest	109,322.46 (\$53.56 per day)	213,071.09 (\$97.35 per day)
Total	\$350,368.46	\$651,172.61

Interest continues to accrue thereafter, as provided in the Notes and until the date of this Judgment, at a daily rate of \$150.91 and thereafter at the statutory rate until the Judgment is satisfied.

21. Customs has a valid judgment lien against the Properties pursuant to a Consent Judgment entered on November 13, 2000 in the amount of \$193,705.48 and recorded with Recorder of Deeds for the District of St. Croix on May 7, 2003 at P.C. 852, at Page 110, as Document No. 2027.

22. IRS has federal tax liens recorded against the Properties: a) in the amount of \$19,597.55 recorded on January 8, 1998; and b) in the amount of \$57,331.56 recorded on September 1, 1998.

23. BIR has a tax lien dated January 15, 1998 in the amount of \$362,867.40

recorded on January 27, 1998.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Banco Popular's Motion for Summary Judgment is **GRANTED**; and

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT** Banco Popular is hereby awarded and shall recover from Paradise Motors and Dennis, jointly and severally, the principal sum of six hundred seventy nine thousand one hundred forty seven dollars and fifty two cents (\$679,147.52) plus earned interest in the amount of three hundred twenty two thousand three hundred ninety three dollars and fifty five cents (\$322,393.55), for a total sum of one million one thousand five hundred forty one dollars and seven cents (\$1,001,541.07) as of May 6, 2005, plus interest accruing thereafter at the daily rate of \$150.91 until the date of this Judgment, and thereafter at the statutory rate until satisfaction.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Banco Popular shall recover from Paradise Motors and Dennis such costs and attorneys fees as may be awarded upon application made prior to confirmation of any sale held pursuant to this Judgment.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Banco Popular's liens against the Properties, the Rents, and the Paradise Motors Collateral pursuant to the 1995 Mortgage, the Assignment, and the 1995 Security Agreement, are first priority liens. The January 8, 1998 IRS lien is second in priority and the BIR tax lien is third in priority. The September 1, 1998 IRS lien is fourth in priority and the judgment lien of Customs is fifth in priority.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Banco Popular's liens against the Leasehold and the Dennis Collateral are first in priority.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that any other claims, liens or encumbrances that may have been recorded against the Secured Property after the date of recording of any of the Security Documents and the notice of lis pendens in this matter or that may be recorded any time hereafter against the interests of Paradise Motors, Dennis, and their successors and assigns in the Secured Property are herewith foreclosed.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Banco Popular's first priority liens shall be foreclosed and the Properties, the Leasehold, the Paradise Motors Collateral, and the Dennis Collateral shall be sold by the United States Marshal according to law and the proceeds of such sale shall be applied first to the expenses associated with any sale, and then toward satisfaction of this Judgment in favor of Banco Popular, including any costs and attorneys' fees that may be awarded upon application, and any sums that may be paid by Banco Popular for insurance premiums, taxes, and expenditures necessary to maintain the Secured Property pending sale, with interest from the date of any such payment. The surplus, if any, shall be paid to the IRS, Customs, and BIR in the order of priority set forth above.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that:

1. Pursuant to V. I. Code Ann. tit. 5, § 484, notice of the Marshal's sale shall be posted for four (4) weeks prior to the sale in a public place in or near the Office of the Clerk of the Court; and published once a week for at least four (4) consecutive weeks prior to the



sale in a newspaper regularly issued and of general circulation in the Virgin Islands. The notice shall describe the property to be sold as set out above and shall contain the terms and conditions of sale as set out herein.

2. The terms and conditions of the sale shall be as follows:

- (a) The Properties, the Leasehold, the Paradise Motors Collateral, and the Dennis Collateral shall be seized and sold as a whole at public sale at the Virgin Islands Office of the U.S. Marshal, St. Thomas, Virgin Islands.
- (b) Banco Popular may bid a credit against this Judgment and interest thereon, plus any costs and expenses, without tender of cash.
- (c) The terms of sale as to all other persons or parties bidding shall be cash. The successful bidder (the "Purchaser") shall be required to deposit with the United States Marshal cash equal to ten percent (10%) his total bid at or before 5:00 p.m. on the date of sale and the remaining ninety percent (90%) of the purchase price to be paid on or before 5:00 p.m. within thirty (30) days, inclusive of the day of sale.
- (d) The Purchaser shall be responsible for the payment of any commission due and owing to the United States Marshal, pursuant to 28 U.S.C. § 1921, and for the payment of taxes, recording fees, and related charges associated with obtaining and recording a NY deed.

- (e) The United States Marshal shall make his report of sale within ten (10) days from the date of sale.
- (f) If no objection has been filed in writing in this cause with the Clerk of the Court by 10:00 a.m. within fifteen (15) days inclusive from the date of sale, the sale shall be confirmed without necessity of motion.

3. Banco Popular shall have any and all writs necessary to execute the terms of this Judgment. .

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Paradise Motors and Dennis shall be jointly and severally liable to Banco Popular for any deficiency remaining after the Marshal's sale.

**ENTERED** this 14th day of August 2007.

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Curtis V. Gómez  
Chief Judge